

Applicant(s): Daly, et al.
Serial No.: 09/672,148
Filed: September 28, 200

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Response to Notice of Non-Compliant Amendment/Petition for Extension of Time

In the listing of claims, above, Applicants respond to the November 16, 2007 Notice. Note, that as discussed below, Applicants are also requesting that the Notice be withdrawn. However, if the Notice is not withdrawn, the above listing serves as a response to the Notice.

Since it is believed that the November 16, 2007 Notice was mailed in error, and should be withdrawn, it is not believed that any petition for an extension of time is required with this paper. *However, if any petition for extension of time is due, Applicants petition for a three-month extension of time, and request that the \$1050.00 large entity fees for this petition for extension of time be deducted from deposit account No. 50-3355.*

In Examiner Armstrong's January 11, 2007 Office Action, "A new/complete listing of all the claims in compliance with 37 C.F.R. 1.173(b)" was required. 37 CFR 1.173(b)(2) states in part "(2) Claims. ... For any claim changed by the amendment paper, a parenthetical expression "amended," "twice amended," etc., should follow the claim number." 37 CFR 1.173(b)(2) does not specifically cover the case where claims are not amended in a paper but are included per an Examiner's request. Since no claims were changed in the June 8, 2007, Response in this application, or any of the subsequent responses to Notice of Non-Compliant Amendments, no status identifiers are required in the claim listing above.

Request for Withdrawal of the Notice

Applicants assert that the Notice of Non-Compliant Amendment mailed November 16, 2007 in this application was mailed in error, and ask that it be withdrawn.

On November 16, 2007 the Office mailed the Notice, asserting that the status identifiers were improper. Applicants assert that the status identifiers provided in Applicants' November 5, 2007 Response to Notice of Non-Compliant Amendment were correct (as are the claims listed above, which do not include status identifiers).

In Applicants' November 5, 2007 Response it was noted that the undersigned and Examiner Holland (who signed a June 19, 2007 Notice of Non-Compliant Amendment) agreed that the June 19, 2007 Notice was mailed in error. In Applicants' November 5, 2007 Response it was noted that the undersigned and Examiner Angela Armstrong agreed that in response to the October 5, 2007 Notice of Non-Compliant Amendment (which the undersigned asserts was

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mailed in error) the undersigned should file the claims filed on June 8, 2007. The undersigned did so.

In Examiner Armstrong's January 11, 2007 Office Action, "A new/complete listing of all the claims in compliance with 37 C.F.R. 1.173(b)" was required. Applicants responded in the June 8, 2007, Response with a complete listing of the claims, including status identifiers as required by 37 CFR 1.173(b)(2).

37 CFR 1.173(b)(2) states in part "(2) Claims. ... For any claim changed by the amendment paper, a parenthetical expression "amended," "twice amended," etc., should follow the claim number." 37 CFR 1.173(b)(2) does not specifically cover the case where claims are not amended in a paper but are included per an Examiner's request. However, the undersigned asserts that in the special case of, in a reissue application, an Examiner requiring a listing of claims amended previously, including status identifiers as included in the November 5, 2007 Response conforms to 37 CFR 1.173(b)(2). Since it appears that there is disagreement as to this interpretation, Applicants are including a listing of the claims as above.

The November 5, 2007 Response to Notice of Non-Compliant Amendment stated:

- ☒ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).

The undersigned notes that this statement does not conform to the status identifiers required in a reissue application. See 37 CFR 1.173(b)(2).

Further, if the status identifiers in the November 5, 2007 Response are in fact incorrect, the undersigned understands that Examiner Armstrong will or has corrected these status identifiers via an Examiner's amendment (see Interview Summary, below).

Lastly, Applicants assert that the Notice was improper because the listing of claims was not an "Amendment" but rather simply a courtesy listing of claims in response to the request in the Examiner's January 11, 2007 Office Action. Therefore, the form of this listing of claims is not governed by 37 CFR 1.173(b)(2), and therefore a Notice of Non-Compliant Amendment was not proper.

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Interview Summaries

During a December 21, 2007, telephone conversation, the undersigned and Examiner Armstrong discussed the November 16, 2007 Notice of Non-Compliant amendment. The undersigned stated that he thought the Notice was mailed in error, and the previous paper filed by the undersigned in this case did not include erroneous status identifiers. Examiner Armstrong agreed that the Notice was mailed in error, and that she had attempted to solve the problem by contacting another person at the Office and suggested that she might solve the problem by drafting an Examiner's amendment. The undersigned agreed to have the issues in the Notice be resolved via an Examiner's amendment.

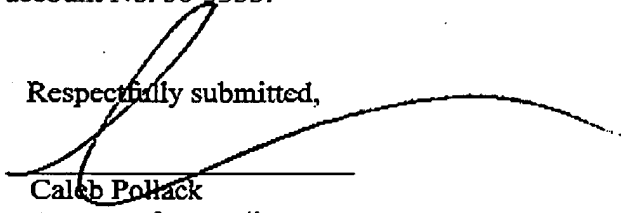
On February 11, 2008, the undersigned and Examiner Armstrong exchanged voicemails in which it was agreed that Examiner Armstrong would mail a paper indicating that Applicants do not have to reply to the outstanding Notice.

CONCLUSION

The Examiner or any other person at the Office is invited to telephone the undersigned to discuss any still outstanding matters with respect to the present application.

As discussed, no fees are believed to be due associated with this paper. However, if any such fees are due (including fees for a petition for extension of time, as discussed and requested above), please charge such fees to deposit account No. 50-3355.

Respectfully submitted,


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Dated: March 17, 2008
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